

1 HOWARD GILBERT,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. HUTTON:

6 Q. Mr. Gilbert, I'm Tom Hutton. I represent
7 Reading Broadcasting, Inc. in this case. And I'm
8 going to be asking you a series of questions about
9 Adams Communications. And if you don't understand a
10 question or don't hear me correctly, please feel free
11 to ask me to restate or rephrase the question. If
12 you want to take a break at any time, please indicate
13 so and we will take a break.

14 We have agreed upon a sequestration rule in
15 this case, which means that you are not to discuss
16 the subject matter of what we discussed today with
17 anyone else in the company whose deposition has not
18 yet been taken.

19 Will you state your name and address for
20 the record.

21 A. Howard M. Gilbert, home, 180 East Pearson
22 Street, Chicago, 60610.

1 Q. Mr. Gilbert, are you taking any medication
2 that could affect your ability to recall past events
3 or to testify accurately as to past events?

4 A. No. I was yesterday. I took Novocaine.

5 (Discussion off the record.)

6 Q. Can you state where you're employed.

7 A. Partner in Holleb & Coff law firm, Chicago,
8 55 East Monroe Street.

9 Q. How long have you been a partner in this
10 firm?

11 A. About 15 years.

12 Q. Prior to that where did you work?

13 A. Firm, Erin, Shimber, Hess & Gilbert, 55
14 West Monroe Street.

15 Q. So you like to stick to the same number,
16 just switch the east and west?

17 A. Right.

18 Q. Have you ever been to Reading,
19 Pennsylvania?

20 A. Yes.

21 Q. When?

22 A. I have been there a number of times.

1 Q. When was the most recent visit?

2 A. I think, if I'm not sure, July or August.

3 Q. Of 1999?

4 A. Yes.

5 Q. And what was the purpose of that visit?

6 A. Meet with local counsel.

7 Q. What was the purpose of the meeting?

8 A. I think that's really a question of
9 attorney-client privilege as it was to discuss the
10 conduct of the case.

11 Q. What was the nature of the work that the
12 local attorneys were doing?

13 MR. COLE: Objection. It's privileged.

14 MR. HUTTON: No, it's not. It doesn't --
15 well, you need to state more than that in order to
16 establish whether it's privileged.

17 MR. COLE: You're asking the client to
18 disclose to you the work which was undertaken at the
19 client's instruction by client's counsel. If that's
20 not work product --

21 MR. HUTTON: That doesn't necessarily
22 reflect a communication between the attorney and the

1 client.

2 MR. COLE: It certainly reflects a work
3 product, that is what the nature of the work that was
4 being undertaken. Seems to me if -- I don't know how
5 specific of an answer you want. You know it was in
6 connection with the litigation.

7 BY MR. HUTTON:

8 Q. Do you recall why it was necessary for you
9 to meet with them face-to-face?

10 A. Yes.

11 Q. Why was that?

12 A. To discuss what they were going to do as
13 lawyers for the client.

14 Q. Why is it that you couldn't do that over
15 the phone?

16 A. How many years have you been practicing?

17 Q. I'm not answering questions here.

18 A. Because I felt as an experienced lawyer
19 there's times when a face-to-face communication was
20 more important than communicating over the phone.
21 This was one of those instances.

22 Q. How long were you in Reading during that

1 visit?

2 A. Three hours.

3 Q. Prior to that when had you visited Reading?

4 A. Several years before. I can't remember
5 exactly when. I would say approximately three years
6 before.

7 Q. What was the purpose of that visit?

8 A. To negotiate a transmitter site.

9 Q. Who did you meet with at that time?

10 A. I don't remember the name of the man.

11 Q. Did you negotiate a lease or an option

12 or --

13 A. I negotiated a lease. It may have included
14 an option.

15 Q. Was that for an existing tower?

16 A. It involved an existing tower.

17 Q. Did it involve making modifications to an
18 existing tower?

19 A. Yes.

20 Q. Do you know who the existing users of that
21 tower are?

22 A. Conestoga is one existing user. I don't

1 know if there are any other existing users.

2 Q. Was this before Adams Communications filed
3 this application?

4 A. I don't remember. I don't remember.

5 Q. Just to give a frame of reference, the
6 application was filed on June 30th, 1994. Does that
7 help you recall whether it was before or after?

8 A. Not really. I tend to collapse time. I
9 just don't remember.

10 Q. And how long was your visit during that
11 trip? I'm sorry. How long was your visit during
12 that trip?

13 A. How long what?

14 Q. How long were you in Reading?

15 A. Couple of hours.

16 Q. Prior to that had you visited Reading?

17 A. Yes.

18 Q. When was the most recent visit to Reading?

19 A. That was the one when I met with the
20 lawyers.

21 Q. I'm sorry. I'm referring to the period
22 prior to your meeting to negotiate the transmitter

1 site, had you visited prior to that time?

2 A. Yes.

3 Q. When did that visit occur?

4 A. A month or two beforehand.

5 Q. What was the purpose of that visit?

6 A. To see Reading to try to understand what
7 Reading was about.

8 Q. Did anyone else accompany you on any of
9 these trips?

10 A. No.

11 Q. And do you recall any particular
12 individuals you may have met with in the trip you
13 took to see what Reading was about?

14 A. I talked to various people. I'm pretty
15 experienced, as is Mr. Haag, in going to a community
16 and finding out what the community is like by talking
17 to people on somewhat of an anonymous basis, but the
18 sort of people that have the feel of what's going on
19 in the community, people in stores in particular.
20 Just talk to people that I thought would sort of have
21 a feel for what was going on there, restaurant
22 people, people in the stores.

1 Q. How long were you in Reading that time?

2 A. A number of hours.

3 Q. It was less than a day?

4 A. Less than -- beginning of the day to the
5 end of the day sort of.

6 Q. So you flew in in the morning and flew out
7 at night?

8 A. May or may not have flown out that night.
9 It may have been too late to fly out when I got
10 back. I think it probably was, but a good long day
11 though.

12 Q. Prior to that, had you visited Reading
13 before?

14 A. I may have gone there one more time too. I
15 may have done this twice. I'm not sure. I may have
16 done it twice. I think I did. I'm not positive, but
17 I think I did it twice.

18 Q. Again, given that the application was filed
19 on June 30, 1994, do you recall whether any of these
20 visits occurred before the application was filed?

21 A. I just don't remember.

22 Q. Do you recall whether you had been to

1 Reading before either of these day-long visits?

2 A. Years before I think I was in Reading once.

3 Q. For what purpose?

4 A. Just happened to be there.

5 Q. Do you recall how long you were there then?

6 A. No.

7 Q. Was it less than a day?

8 A. Yes.

9 Q. Do you recall any other visits to Reading?

10 A. No.

11 Q. Do you recall watching television on any of
12 these visits?

13 A. Yes.

14 Q. When did you watch television?

15 A. I was having lunch.

16 Q. During which visit?

17 A. I don't remember.

18 Q. Do you know what station or stations you
19 watched?

20 A. I don't remember now. I didn't watch the
21 station in question, I'll tell you that. Couldn't
22 get it on the television set.

1 Q. And do you recall if prior to filing the
2 application of Adams Communications, you undertook
3 any investigation of the television market in which
4 that station operates?

5 A. Yes.

6 Q. What was the nature of that investigation?

7 A. I pulled data on the television market and
8 various material which you use in try to find out
9 what the economic aspects are, demographic aspects of
10 a market are.

11 Q. Did anyone assist you in that process?

12 A. Probably had a librarian or somebody. I
13 don't do this stuff myself, but I can't tell you who
14 the person was.

15 Q. Did you share the results of that research
16 with anyone?

17 A. Yes.

18 Q. Who?

19 A. Robert Haag, may have shared it with
20 Fickinger. I don't remember. Richard knows a lot
21 about these things. Probably Fickinger. I'm not
22 sure.

1 Q. Do you recall the nature of any written
2 product that may have come out of that analysis or
3 research?

4 A. There was no written product.

5 Q. You didn't take any notes?

6 A. I have a pretty good memory as to facts and
7 figures and for a relevant area. I didn't need any
8 notes.

9 Q. Did you obtain any information about the
10 revenue of Channel 51 in Reading, Pennsylvania?

11 A. No. I'm not sure, but I don't think so. I
12 wasn't interested in that fact.

13 Q. Why weren't you interested in that?

14 A. Because that wasn't the issue that I was
15 interested in.

16 Q. What were you interested in?

17 A. I was interested in whether they were
18 rendering a service to the community.

19 Q. What was your conclusion?

20 A. They weren't.

21 Q. Why not?

22 A. Because I believe a television station

1 should serve the interests of the community and make
2 available through the broadcast media what's going on
3 in the community, provide public service of one sort
4 or another. They just weren't.

5 Q. Do you know what they were doing?

6 A. Yes.

7 Q. What was it?

8 A. Home shopping network.

9 Q. Do you know if any other stations in the
10 country were doing home shopping network programming?

11 A. Yes.

12 Q. Did you analyze those stations?

13 A. Some.

14 Q. Do you recall the markets, the other
15 markets that you may have researched?

16 A. I think there were about 15 markets that
17 were -- I believe it was Silver and whatever it was
18 they were broadcasting into.

19 Q. Was that Silver King Broadcasting?

20 A. Silver King.

21 Q. Did you reach any conclusion as to whether
22 or not the Silver King stations were providing a

1 public service?

2 A. Yes.

3 Q. What was your conclusion?

4 A. They weren't either.

5 Q. And did you share that analysis with
6 anyone?

7 A. Yes.

8 Q. With who?

9 A. Robert Haag, probably Fickinger, maybe
10 Umans. I don't know. Probably -- I'm not sure who.
11 Harry Cole surely, Gene Bechtel.

12 Q. Did you ever suggest to anyone filing a
13 competing application against any of the Silver King
14 stations?

15 A. I don't know, because we considered it. I
16 don't know if we ever suggested that or not. I
17 talked about it.

18 Q. I take it you talked about it with the
19 individuals you just named?

20 A. Some, not necessarily all.

21 Q. Who?

22 A. Probably Bob Haag, maybe Fickinger, I just

1 don't remember.

2 Q. Did you individually or with the group
3 collectively reach a decision to file or not file
4 against any of those stations?

5 A. I think that speaks for itself. We filed
6 against this station.

7 Q. I'm sorry. I was referring to the Silver
8 King stations.

9 A. Please repeat the question.

10 Q. Did you individually or did the group
11 collectively reach a decision not to file against any
12 of the Silver King stations?

13 A. We never filed. That's all I can remember,
14 that result.

15 Q. Do you know why not?

16 A. None of them were coming up for renewal at
17 that point. If they had, we would have.

18 Q. Apart from the Silver King stations and the
19 Reading station, do you recall undertaking this type
20 analysis for any other stations?

21 A. I don't remember who owned what station,
22 but we looked at home shopping network stations,

1 whoever owned them.

2 Q. Do you ever recall doing an analysis as to
3 whether or not to file a competing application
4 against a station in or near Boston, Massachusetts?

5 A. Yes.

6 Q. Do you know who operated that station?

7 A. No. I assume Silver King, but I really
8 don't remember.

9 Q. And do you recall specifically with respect
10 to that station why your group never filed a
11 competing application?

12 A. Yes.

13 Q. Why is that?

14 A. Couldn't find an antenna site.

15 Q. Who was it that searched for the antenna
16 site?

17 A. We had a broker. I don't remember the
18 broker's name.

19 Q. Do you recall having discussions with
20 anyone else about your plans for programming on the
21 Reading station if your application were granted?

22 A. Obviously the answer is no. I don't recall

1 offhand discussions.

2 Q. Do you recall participating in any
3 discussions with anyone about the management of the
4 Reading station if your application were successful?

5 A. Yes.

6 Q. Who participated in those discussions?

7 A. Bob Haag.

8 Q. What was discussed?

9 A. Who would manage the station, how would we
10 staff it.

11 Q. Did you decide who would manage the
12 station?

13 A. No. There's no point in doing that four
14 years -- our experience is that everybody moves
15 and -- take a station and look at who's on staff and
16 look at the station actually three years later
17 probably almost, nobody is still there. It's
18 irrelevant until you get the license. There's always
19 people available. I knew this would be a long
20 slugging fight.

21 Q. Did you have any discussions about the size
22 of the staff?

1 A. No. We talked about money, but we never
2 talked about size of staff.

3 Q. When you say you talked about money, what
4 do you mean?

5 A. Budgets, what probably it would cost us to
6 get going.

7 Q. Was that ever committed to writing?

8 A. No.

9 Q. There was never any written budget?

10 A. No. I don't think -- I can't answer
11 positively. I don't think there was. We did it in
12 connection with the application, but I just don't
13 remember it. May or may not have been.

14 Q. Do you recall participating with anyone in
15 any discussion of potential ownership changes in
16 Adams Communications?

17 A. I don't know what you are talking about.

18 Q. Well, did you ever have discussions about
19 expanding or contracting the size of the group?

20 A. No.

21 Q. Did you ever have any discussions about one
22 or more persons possibly selling their interest in

1 Adams Communications?

2 A. I don't think so, no.

3 Q. Did you ever have any discussions with
4 anyone about any member of the organization assigning
5 or transferring their ownership to anyone else?

6 A. No.

7 Q. Have you ever been involved in any
8 discussions with anyone about potential sale of the
9 FCC authorization if your application were granted?

10 A. I don't think so. What's his name offered
11 us \$250,000 to back out.

12 Q. Who was that?

13 A. Michael Parker.

14 Q. When did that occur?

15 A. Sometime in the last three years or
16 something I would say. I'm bad on -- if I had to say
17 closer to one year than to three years, but he called
18 me and offered 100 -- 250,000 if we would withdraw
19 our application.

20 Q. What was your response?

21 A. Told him we wanted to operate the station.
22 Let's see. Telemundo may have made -- I don't

1 remember, but Telemundo, I'm not sure -- but they --
2 I guess not. I'm not sure if anybody has ever made
3 an offer. Somebody, I'm not sure who, talked about
4 making a joint offer to us and your client about
5 selling our interests. I don't remember who that
6 was.

7 Q. Do you think it might have been Telemundo
8 or someone representing Telemundo?

9 A. I just don't remember. I'm not even sure
10 it was Telemundo. But I just dismissed it pretty
11 much out of hand. I just don't remember. It might
12 have been Telemundo and somebody else. I just don't
13 remember.

14 Q. Do you recall if a specific dollar figure
15 was presented to you?

16 A. No, no figure was ever presented.

17 Q. Why did you dismiss it out of hand?

18 A. We intend to operate the station. We
19 intend to win the lawsuit.

20 Q. Have you ever had any discussions with
21 Telemundo or any other programmer about providing
22 programming to the station if your application is

1 successful?

2 A. No.

3 Q. The more recent approach to you about
4 settling the case, do you recall when that occurred?

5 A. You mean Parker's?

6 Q. No, no, the other group that you couldn't
7 remember.

8 A. Nobody ever offered to settle the case.
9 The only offer I ever I had to settle the case was
10 Mike Parker's for 250.

11 Q. Maybe I misunderstood. I had thought that
12 the other party that approached you was interested in
13 disposing of your application and acquiring the
14 station; is that correct?

15 A. They said they wanted to talk to Parker and
16 to us about it.

17 Q. Do you recall when that discussion
18 occurred?

19 A. I would say sometime in the last year or 18
20 months.

21 Q. Was that a face-to-face meeting?

22 A. No. It could have been Parker and another

1 guy for all I know. It was a phone call.

2 Q. Did anyone besides you participate in that
3 call on behalf of Adams Communications?

4 A. It was a call to me. Only the party on the
5 other side.

6 Q. You didn't patch in Mr. Haag?

7 A. No, no. I didn't give it a lot of credence
8 frankly. It was a phone call.

9 Q. Where was it left at the end of that phone
10 call?

11 A. Nothing ever came of it. I told him I
12 wasn't interested, but I never got a second phone
13 call.

14 Q. Do you recall any other discussions with
15 any party outside of Adams Communications about a
16 potential settlement of the case?

17 A. None.

18 Q. I'm going to ask you a series of questions
19 about media interests, and by that I mean interests
20 in any form of mass communications, whether it be
21 broadcast satellite, cable television, publications
22 of any type. I'm excluding any ownership interest

1 less than 1 percent in a publicly traded company.
2 With those parameters, do you hold any ownership
3 interests of any type in any company or organization
4 that owns or operates any mass communications
5 outlets?

6 A. No. I'm trying to think of magazines.
7 Other than magazines, no, I don't think I have, other
8 than magazines.

9 Q. You don't think --

10 A. Nothing other than magazines. I'm trying
11 to think if I have any interest in any printed
12 situations. I don't think so, no.

13 Q. Are you an officer of any company or
14 organization that owns or operates any mass
15 communications outlet?

16 A. Other than Adams, no.

17 Q. Director of any such company?

18 A. No.

19 Q. How did you first learn of the opportunity
20 to apply in Reading, Pennsylvania?

21 A. We did a search of expiration dates of
22 licenses.

1 Q. And approximately when did that search
2 occur?

3 A. We filed in '94. I don't remember when we
4 filed in '94, but sometime before that.

5 Q. You filed in June 30, 1994.

6 A. So I would say in the year before that, but
7 I don't remember when in the year, certainly more
8 than three months before. I would think it could be
9 six months; sometime before.

10 Q. I would like to refer you to what's been
11 identified as Fickinger Exhibit 1, which is a copy of
12 the application as originally filed at the FCC, and
13 specifically I would like to refer you to Page 3 of
14 that form.

15 A. Page 3.

16 Q. If you look at the bottom.

17 A. I'm working on there, yes.

18 Q. In the middle of that page there's
19 reference to incorporation in Boston, Massachusetts
20 in November -- on November 23, 1993. Is it fair to
21 say it would have occurred before then?

22 A. Yeah, probably.

1 Q. Can you recall why it was decided to
2 incorporate in Massachusetts?

3 A. Yeah, at that time we were looking at that
4 station. We were hoping to find a site for a Boston
5 station to do the same thing.

6 Q. Who was involved in discussions about who
7 would be owners of this new entity?

8 A. Who was involved?

9 Q. Yes.

10 A. Can you ask that question more pointedly?

11 Q. What's that?

12 A. Could you ask it more pointedly?

13 Q. Well, who participated in the discussions
14 about who would join in this effort?

15 A. Bob Haag, myself, Fickinger, Steinfeld,
16 Umans probably.

17 Q. How were the relative percentage interests
18 of ownership decided or negotiated?

19 A. They weren't negotiated, just friendly
20 discussion. In other words, whatever was -- we're
21 all friends. Basically we were all in the Monroe
22 case together. Basically most of us go into

1 investments together on a continuing basis, so there
2 was no -- it was just one of those things that fell
3 out.

4 Q. Was there ever any discussion of everyone
5 holding an equal percentage?

6 A. No.

7 Q. Why not?

8 A. Just wasn't. Nobody said I want more at
9 the time or anything like that. Most of us are in a
10 lot of investments together. Just whoever controls
11 it allocates it. Everybody trusts one another to be
12 fair.

13 Q. What other investments have you been in
14 with Mr. Haag?

15 A. Seriously?

16 Q. Yeah.

17 A. Probably 10 to 15 pieces of real estate I
18 would guess, a number of radio stations years ago,
19 various businesses; let's say at least five
20 companies, maybe 10 or 15, I'm probably missing
21 things. Is that a good enough answer or do you want
22 more?